

**OPINION  
72-310**

June 22, 1972 (OPINION)

Mrs. Bernice Asbridge

State Treasurer

RE: State - Bar Association - Fees

This is in response to your letter in which you call attention to section 27-07-41 of the North Dakota Century Code as amended. You further advise that as of July 1, 1972, the remittance of \$2.50 by the county treasurer to the State Bar Association is no longer required as the result of the amendment by the 1971 Legislature. You then ask the following questions:

1. Is the State Bar Association entitled to this fee as collected by the County Treasurer prior to July 1, 1972, but due to bookkeeping procedures, such fee would not be available for distribution until after said date?
2. Is the State Bar Association entitled to recover the unexpended balance remaining in said fund after July 1, 1972?"

You further state that if the answer to the above question is in the affirmative, what procedures would we recommend for the association to follow for the recovery of such fund?

The above mentioned section, together with other sections, were amended by chapter 297 of the 1971 Session Laws. The basic result of the amendment is the elimination of paying a portion of the filing fees to the North Dakota State Bar Association. Prior to the enactment of chapter 297, the State Bar Association received \$2.50 from the \$7.50 filing fee required to be paid to the Clerk of Court under section 11-17-04 and \$5.00 from the \$15.00 filing fee paid to the clerk of the North Dakota Supreme Court. Prior to the enactment of Chapter 297 of the 1971 Session Laws, the State Bar Association also received the sum of \$2.50 from the \$7.50 fee required for probate proceedings including letters testamentary, guardianship, etc., but not from the \$3.00 filing fee for the determination of estate tax on a joint tenancy.

Chapter 297 leaves the filing fees substantially in the same amounts as they were prior to its enactment. The major and, one may conclude, the only significant change is that no portion of the filing fee will be transmitted, or paid over to the State Bar Association for its use. The funds heretofore received by the North Dakota State Bar Association were used for legal research and education and supervision and improvement of the judicial system of the State of North Dakota. The statute, section 27-12-08, setting forth the use of such funds, has also been repealed by Chapter 297.

In examining the provisions of law which will be in effect until July 1, 1972, which is the effective date of Chapter 297, we find

that a portion (\$2.50 or \$5.00) of the filing fees paid are required to be transferred to the State Bar Association for its use. The amount to be transferred is specific. It is a portion of the filing fee. It is not a portion of the existing fund, but rather a portion of the fees as same are paid.

The troublesome area is in the time when the funds are transmitted. The current statutes provide that the funds are to be paid over monthly. In addition to this, the current provisions of section 11-17-05 provides that the Clerk of Court within three days after the close of the calendar, and also at the close of his term of office, shall report the amount of fees collected and within three days thereafter, he shall deposit such fees with the county treasurer. The county treasurer is by law required to remit \$2.50 for every action filed in District Court to the North Dakota Bar Association.

Under Chapter 297, which has its effective date July 1, 1972, there is no provision for the remittance to the State Bar Association, and it is apparently in this respect that you submitted the questions.

Section 1-02-10 of the of the North Dakota Century Code specifically provides that no part of the code is retroactive unless it is expressly declared to be so. This is also the general rule of law. Chapter 297 becomes part of the Century Code and therefore the aforementioned section would have application.

The authority and duty to transfer funds to the State Bar Association has been in effect repealed as a result of the amendments of chapter 297.

82 C.J.S. statutes section 435, page 1010 states:

"The repeal of a statute does not operate to impair or otherwise affect rights which have been vested or accrued while the statute was in force. This rule is applicable alike to rights acquired under contracts and to rights of action to recover damages for torts."

The same authority continues by saying:

"Even where no question of vested rights is involved, the presumption is that repeal of a statutes does not invalidate the accrued results of its operative tenure, and it will not be thus retroactively construed as undoing accrued results if not clearly required by the language of the repealing act."

50 Am. Jur. Statutes section 526, page 533, states in part as follows:

"\* \* \* It is clear that the repeal of a statute cannot have the effect of extinguishing vested rights which have been acquired under the former law, and where the result will be to impair contracts or vested rights, a construction is to be avoided which will give a retrospective operation to a repealing statute. Under this rule, where a right has arisen upon a contract, or a transaction in the nature of a contract, authorized by statute, and has been so far perfected that

nothing remains to be done by the party asserting it, the repeal of the statute does not affect it, or any action for its enforcement. Similarly, it has been held that the repeal of a statute does not take away a right of action for damages which have already accrued.\* \* \*

The aforementioned concepts and principles of law would have application in the present situation resulting from the enactment of chapter 297. A portion of the filing fees paid during the month of June are by law made available to the State Bar Association. This amount is definite. Under the existing laws the State Bar Association is entitled to a portion of these filing fees. The only thing required to be performed is to pay a specific known portion of the filing fees to the State Bar Association. Because of certain factors such as bookkeeping and accounting, the actual remittance is not accomplished until after the close of the month which will occur after the effective date of chapter 297 which amends the various sections and repeals one. Nevertheless, the right to the portion of the filing fee accrued under the existing statutes.

The transfer or payment to the State Bar Association is only a mechanical or an administrative function.

In direct response to question number 1, it is our opinion that the State Bar Association is entitled to a portion of the filing fees collected and paid over to the county treasurer prior to July 1, 1972, even though such fees are not available for distribution because of bookkeeping procedures until some time immediately after July 1, 1972.

In direct response to question number 2, it is our opinion that the State Bar Association may use the unexpended balance remaining in the fund after July 1, 1972. In reviewing the provisions of Chapter 297, it becomes clear that the legislature merely intended to discontinue paying a portion of the filing fee to the State Bar Association from and after July 1, 1972. It also appears clear that the legislature intended to give the State Bar Association the continued use of a portion of the filing fees paid prior to July 1, 1972.

We do not envision any real difficulty in accomplishing this. It is basically an administrative matter rather than a legal matter. The county treasurer should pay a portion of the filing fee for the month of June in the same manner as he had done heretofore even though this will be accomplished in July. However, after having paid the portion of the filing fees for the month of June, no further payments are to be made to the State Bar Association. Similarly, the clerk of the Supreme Court in order to discharge the obligation under the current law, may continue to pay the \$5.00 of the \$15.00 filing fee to the State Bar Association in the month of July for those filing fees paid during the month of June and not previously transferred or paid to the State Bar Association.

In arriving at this conclusion, we are merely recognizing that the law will permit the discharge of obligations which have been incurred under the law before it was repealed or amended.

It is our further opinion that in the absence of any further

legislation, the State Bar Association is not entitled to receive any portion of a filing fee required to be paid to the clerk of the district court or clerk of the Supreme Court or county court from and after the first of July, 1972.

It is our further opinion that the State Bar Association may use the funds received for the purposes outlined in section 27-12-08 until they have been exhausted or in the alternative if other funds by the State Bar Association were advanced for this purpose, it may use such funds to replenish the funds from which the advance was made.

HELGI JOHANNESON

Attorney General